



Attorney Docket No.: P11303-US1

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Date: June 13, 2005

Pamela S. NewtonRe: Patent Application for:
"COMMUNICATION SYSTEM, METHODS OF MANAGING A
COMMUNICATION SYSTEM AND MOBILE USER EQUIPMENT"
Serial No. 09/493,487
Attorney Docket No. P11303-US1

Dear Sir:

Enclosed for filing please find the following items relating to the above-identified application:

- (1) Appeal Brief (19 pages).

The commissioner is hereby authorized to charge appeal brief fee of \$500.00 and any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1379.

Should you have any questions or comments concerning this matter, please feel free to contact the undersigned at 972/583-1573.

Sincerely,

Bill R. Naifeh
Reg. No. 44,962

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Attorney Docket No. P11303-US1
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
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Applicants: Andrew Shart

Group Art Unit: 2684

Serial No: 09/493,487

Examiner: Nguyen, Tu X

Filed: January 28, 2000

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For: COMMUNICATION SYSTEM, METHODS OF MANAGING A COMMUNICATION
SYSTEM AND MOBILE USER EQUIPMENT

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Date: June 13, 2005

Pamela S. Newton
Pamela S. Newton

Dear Sir:

APPEAL BRIEF

This Brief is submitted in connection with the decision of the Primary Examiner set forth in the Official Action dated December 15, 2004 (Paper No. 25), finally rejecting claims 1-38, 40 and 41, which are all of the pending claims in this application.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §41.20(b)(2) that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1379.

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Appeal Brief - PAGE 1 of 19
EUS/J/P/05-9098

Attorney Docket No. P11303-US1
Customer Number: 27045

I. Real Party in Interest

The real party in interest is Telefonaktiebolaget LM Ericsson, a Swedish corporation, with its principal office at SE-164 83 Stockholm, Sweden.

II. Related Appeals and Interferences

To the best of the knowledge of the undersigned, there are no related appeals and no interferences regarding the above application.

III. Status of Claims.

Claims 1-38, 40 and 41 are pending in the present application, which are finally rejected and form the basis for this Appeal. Claims 1-38, 40 and 41, including all amendments to the claims are attached in the Claims Appendix.

IV. Status of Amendments.

An Amendment was filed on February 15, 2005 in response to the Final Office Action dated December 15, 2004. The Examiner did not state in the Advisory Action dated March 11, 2005, whether or not the amendments would or would not be entered.

The claims set out in the Claims Appendix include all filed amendments.

V. Summary of Claimed Subject Matter.

Claim Element	Specification Reference
1. A communication system comprising:	
a Universal Mobile Telecommunications System (UMTS) wherein the UMTS network is capable of handling a first number of simultaneous communications between a mobile user equipment ,	Throughout the specification, including page 5, line 1 to page 6, line 7; page 17, lines 10-14.
a Global System for a Mobile Communication System (GSM) networks, wherein the GSM network is capable of handling a second number of simultaneous communications between the mobile user equipment and the GSM network, and	Throughout the specification, including page 5, line 1 to page 6, line 7; page 17, lines 10-14.
wherein at least one of the mobile user	Throughout the specification, including

Appeal Brief - PAGE 2 of 19
EUS/J/P/05-9098

Attorney Docket No. P11303-US1
Customer Number: 27045

equipment and the communication system contain	page 7, line 32 to page 8, line 1;
at least one means for evaluating if a handover between the UMTS material and GSM material should be effectuated and	Throughout the specification, including page 5, lines 1-11; page 6, lines 17-22; page 19, line 27 to page 20, line 1; page 23, lines 9-10.
at least one means for selecting, in the case that the handover is necessary, which communication or communications are handed over and	Throughout the specification, including page 6, lines 24-29, page 23, lines 19-21.
at least one means for executing the at least one decision.	Throughout the specification, including page 8, lines 12 to 24.

Claim Element	Specification Reference
15. Method for managing a communication system, with at least two different access networks,	Throughout the specification, including page 8, lines 8 to 29; Figs. 1-11.
wherein a first access network is capable of handling a first number of simultaneous communications between a mobile user equipment and the first access network,	Throughout the specification, including page 5, line 1 to page 6, line 7; page 17, lines 10-14.
and wherein a second access network is capable of handling a second number of simultaneous communications between the mobile user equipment and the second access network, said method comprising the steps of:	Throughout the specification, including page 5, line 1 to page 6, line 7; page 17, lines 10-14.
evaluating if a handover from the first access network to the second access network should be effected; and	Throughout the specification, including page 5, lines 1-11; page 6, lines 17-22; page 19, line 27 to page 20, line 1; page 23, lines 9-10.
selecting, in the case that the handover is necessary, which communication or communications are handed over.	Throughout the specification, including page 6, lines 24-29, page 23, lines 19-21.

Claim Element	Specification Reference
40. A system for managing a communication system, with at least two different access networks, wherein a first access network is capable of handling a first number of simultaneous communications between a mobile user equipment and the first access network,	Throughout the specification, including page 5, line 1 to page 6, line 7; page 17, lines 10-14.
and wherein a second access network is capable of handling a simultaneous second	Throughout the specification, including page 5, line 1 to page 6, line 7; page

Appeal Brief - PAGE 3 of 19
EUS/J/P/05-9098

Attorney Docket No. P11303-US1
Customer Number: 27045

number of communications between the mobile user equipment and the second access network, said system comprising:	17, lines 10-14.
means for evaluating if a handover from the first access network to the second access network should be effected; and	Throughout the specification, including page 5, lines 1-11; page 6, lines 17-22; page 19, line 27 to page 20, line 1; page 23, lines 9-10.
means for selecting, in the case that the handover is necessary, which communication or communications are handed over.	Throughout the specification, including page 6, lines 24-29, page 23, lines 19-21.

Claim Element	Specification Reference
41. A communication system comprising:	
a mobile user equipment,	Throughout the specification, including page 7, line 32 to page 8, line 1.
a Universal Mobile Telecommunications System (UMTS) wherein the UMTS network is capable of handling a first plurality of simultaneous calls between a mobile user equipment,	Throughout the specification, including page 5, line 1 to page 6, line 7; page 17, lines 10-14.
a Global System for a Mobile Communication System (GSM) networks, wherein the GSM network is capable of handling a second plurality of simultaneous calls between the mobile user equipment and the GSM network, and	Throughout the specification, including page 5, line 1 to page 6, line 7; page 17, lines 10-14.
wherein at least one of the mobile user equipment and the communication system contain	Throughout the specification, including page 7, line 32 to page 8, line 1;
at least one means for evaluating if a handover between the UMTS material and GSM material should be effectuated and	Throughout the specification, including page 5, lines 1-11; page 6, lines 17-22; page 19, line 27 to page 20, line 1; page 23, lines 9-10.
at least one means for selecting, in the case that the handover is necessary, which call or call from the first plurality of call are to be handed over.	Throughout the specification, including page 6, lines 24-29, page 23, lines 19-21.

The specification references listed above are provided solely to comply with the USPTO's new regulations regarding appeal briefs. The use of such references should not be interpreted to limit the scope of the claims to such references nor to limit the scope of the claimed invention in any manner.

Appeal Brief - PAGE 4 of 19
EUS/J/P/05-9098

Attorney Docket No. P11303-US1
Customer Number: 27045

VI. Grounds of Rejection to be Reviewed on Appeal.

a. Issue 1

The first issue presented for this appeal is whether claims 1-38 and 40-41 are properly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,377,804 to Lintulami (herein "Lintulami '804") in view of U.S. Publication 2001/0046863 to Rinne, et al. (herein "Rinne '863").

b. Issue 2

The second issue presented for this appeal is whether claims 29-30 are properly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,377,804 to Lintulami (herein "Lintulami '804") in view the Examiner's use of Official Notice.

VII. Argument

A. Claims 1-38 and 40-41 are not unpatentable over Lintulami '804 and Rinne '863 under 35 U.S.C. § 103(a):

The Examiner admits that Lintulami does not disclose simultaneous communications. However, the Examiner's position is that Rinne '863 discloses "simultaneous communications" at paragraph 102. For discussion purposes, this paragraph is reproduced below:

Used with a CDMA-type radio network, which facilitates the combining of signals from multiple base stations, or macrodiversity combining, the arrangement according to the invention is characterised by some special features. Macrodiversity combining employs multiple simultaneous connections, first, between the terminal and base station sectors and, second, between the terminal and individual base stations. On the uplink path the terminal uses one signal and one spread code which is received at several base stations. Alternatively, the terminal may use one signal with several spread codes received at several base stations. The final signal is the result of macrodiversity combination. In the downlink direction, several base stations transmit one and the same signal spread using different spread codes to a terminal that performs the

Attorney Docket No. P11303-US1
Customer Number: 27045

macrodiversity combining. The signal connections that provide sufficient signal strength at agreed power levels belong to the so-called active set.

Thus, it appears that the Examiner is now defining the term "communications" to be "radio connections" or "radio links." In past office actions, the Examiner maintained that "communications" were "radio systems."¹ Thus, the Examiner's definition of "communications" seems to be a moving target which has been redefined over the course of this prosecution. In contrast, the Applicant believes the definition of "communications" should be limited to the definition of the term used in the Specification.

The Applicant realizes that in CDMA technology, a mobile unit keeps in contact with one or more base stations via an "active set" of base stations through simultaneous radio links or connections. However, the Applicant maintains that CDMA radio links as used in Rinne '863 are not "communications" as defined by the Applicant.

For instance, the Applicant's specification defines "communications" as:

Examples of the communication include telephone calls, faxes, downloading of data or uploading of data (file transfer). . . According to the invention, communication includes connections as well as connectionless transfer of information such as Short Messaging Service (SMS). Future wireless scenarios for wideband wireless multimedia services can comprise: interactive news delivery (voice, video, E-mail, graphics), interactive e-mail (text, graphics, video clips), interactive audio (CD-quality voice, video, graphics), video conferencing, web browsing, dynamic Internet-based games, downloading large files from intranets or position/location-dependent "push" info. (Specification, page 2, line 20 to page 3, line 4).

It is well established that the inventor can be his own lexicographer. As the MPEP states in section 2106(II)(C):

Office personnel must rely on the applicant's disclosure to properly determine the meaning of terms used in the claims. *Markman v. Westview Instruments*, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (*en banc*), *aff'd*, U.S. , 116 S. Ct. 1384 (1996). An applicant is entitled to be his or her own lexicographer, and in many instances will provide an

¹ Office Action, dated June 5, 2003, paragraph 2. "and the examiner interprets 'radio system' corresponds to 'communication.'"

Attorney Docket No. P11303-US1
Customer Number: 27045

explicit definition for certain terms used in the claims. Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings.")

Thus, it is respectfully suggested that the definition of "communication" as defined in the Applicant's specification be used to properly determine the meaning of terms used in the claims. Rinne only discusses the CDMA concept of spread spectrum technology. In this transmission technique, the frequency spectrum of a data-signal is spread using a code uncorrelated with that signal between base stations and mobile units. There is no discussion of in either Lintulampi nor Rinne regarding the concept of simultaneous "communications" as this term is defined by the specification. In other words, neither Lintulampi nor Rinne teach a mobile phone which can receive simultaneous phone calls, faxes, file transfers, etc.

In order to establish a *prima facie* case of obviousness, the cited references must collectively disclose all of the elements of the rejected claims. As shown above, Rinne does not disclose simultaneous communications as defined by the Applicant's specification. Additionally, Lintulampi, does not make up for the shortcomings of Rinne. Thus, not all of claim elements are taught by the combination of Rinne and Lintulampi.

Assuming *arguendo* that the term "communication" as that term is defined by the Applicant could somehow be found in Rinne, there is still no motivation for combining the references.

The examiner states "it would have been obvious to modify Lintulampi with the above teaching of Rinne" (i.e., CDMA spread spectrum technology) "in order to provide tunnels between two networks by determining a new route between the anchor controller and a new active radio network controller so that the previous active radio network control is by passed (as suggested by Rinne, see paragraphs 029 and 072). The motivation of "determining of a new route" as suggested by the examiner has nothing to do with the mention of CDMA spread spectrum technology discussed in

Attorney Docket No. P11303-US1
Customer Number: 27045

paragraph 102 of Rinne. As anyone skilled in the art would realize, spread spectrum technology could not possibly be used to "provide tunnels between two networks by determining a new route between the anchor controller and a new active radio network controller so that the previous active radio network control is by passed."

All of the cited passages in Rinne deal with signals between the mobile unit and the base stations or RNCs. Nothing in Rinne deals with signals going into and out of the core network – as would have to be the situation with a "communication" as used in the present claims. Thus, there is no motivation for combining the references.

According to MPEP § 2143.01, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Obviousness cannot be established by combining references "without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done." MPEP 2144, quoting from *Ex parte Levengood*, 28 USPQ2d 1300, 1302 (Bd. Pat. App. & Inter. 1993). "Broad conclusory statements regarding the teaching of multiple references, standing alone are not "evidence." See *Dembiczak*, 50 USPQ2d, 1614, (Fed. Cir. 1999).

Thus, the case law is clear that there must be evidence that a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. It is also clear that a rejection cannot be predicated on the mere identification of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *Ecolchem Inc. v. Southern California Edison*, 56 USPQ2d 1065, 1076 (Fed. Cir. 2000).

Appeal Brief - PAGE 8 of 19
EUS/J/P/05-9098

Attorney Docket No. P11303-US1
Customer Number: 27045

The case law makes it clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. See *Dembiczak*, 50 USPQ2d, 1614, 1617 (Fed. Cir. 1999). "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight." *Id.* It is respectfully submitted that the only way Lintulampi and Rinne could be pieced together to defeat patentability is indeed to use Applicant's disclosure as a blueprint.

B. Claims 29-30 are not unpatentable over Lintulampi '804 and the Examiner's use of Official Notice:

In the Office Action dated June 6, 2004 (paper no. 23); the Examiner rejected claims 29-30 in view of Lintulampi and official notice. In the Applicant's response, dated September 7, 2004, the Applicant respectfully traversed the use of "official notice" and requested that the examiner "provide such supporting facts and evidence in the form of an affidavit, so that if necessary, the Applicant may explain the reference." Contrary to the PTO's regulations, the examiner completely ignored this request and issued a final office action, dated December 15, 2004.

In the Applicant's response to the Final Office Action, dated February 15, 2005, the Applicant again respectfully traversed the use of "official notice" and requested that the examiner "remove the finality of this Office Action so that the Applicant has an opportunity to respond to the examiner's affidavit." This request was also ignored.

As the PTO recognizes in MPEP ' 2142:

... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...

The Applicant maintains that unless the examiner properly responds to the Applicant's request, the use of Official Notice is improper. Consequently, it is

Appeal Brief - PAGE 9 of 19
EUS/J/P/05-9098

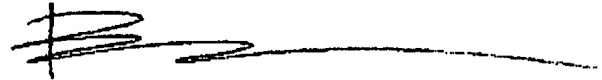
Attorney Docket No. P11303-US1
Customer Number: 27045

respectfully submitted that the examiner has not overcome his initial burden of factually supporting a prima facie case of obviousness.

Because the examiner has not made his prima facie case, claims 29 and 30 are in a patentable condition and should be allowed.

For all of the foregoing reasons, it is respectfully submitted that claims 1-38 and 40-41 be allowed. A prompt notice to that effect is earnestly solicited.

Respectfully submitted,



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Date: June 13, 2005

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Attorney Docket No. P11303-US1
Customer Number: 27045

VIII. Claims Appendix.

1. (Previously Presented) A communication system comprising:
 - a Universal Mobile Telecommunications System (UMTS) wherein the UMTS network is capable of handling a first number of simultaneous communications between a mobile user equipment ,
 - a Global System for a Mobile Communication System (GSM) networks, wherein the GSM network is capable of handling a second number of simultaneous communications between the mobile user equipment and the GSM network, and
 - wherein at least one of the mobile user equipment and the communication system contain
 - at least one means for evaluating if a handover between the UMTS material and GSM material should be effectuated and
 - at least one means for selecting, in the case that the handover is necessary, which communication or communications are handed over and
 - at least one means for executing the at least one decision.
2. (Previously Presented) The communication system according to claim 1, further comprising at least one means for determining a capability of at least one of the UMTS and GSM networks.
3. (Previously Presented) The communication system according to claim 2, wherein the means for determining the capability is located in a core network.
4. (Previously Presented) The communication system according to claim 1, wherein at least one of the UMTS and GSM network contains the means for executing the at least one decision.
5. (Previously Presented) The communication system according to claim 1, further comprising a core network that contains the means for executing the at least one decision.

Attorney Docket No. P11303-US1
Customer Number: 27046

6. (Previously Presented) The communication system according to claim 1, wherein the mobile user equipment contains the means for executing the at least one decision.

7. (Previously Presented) The communication system according to claim 1, wherein at least one of the UMTS and GSM network contains the means for making at least one decision.

8. (Previously Presented) The communication system according to claim 1, further comprising at least one core network that contains the means for making at least one decision.

9. (Previously Presented) The communication system according to claim 1, wherein the mobile user equipment contains the means for making at least one decision.

10. (Previously Presented) The communication system according to claim 1, further comprising means for making at least one decision whether an intersystem handover is necessary.

11. (Previously Presented) The communication system according to claim 10, wherein the means for making at least one decision whether an intersystem handover is necessary is a device.

12. (Previously Presented) The communication system according to claim 11, wherein the device is located in at least one of the UMTS and GSM network.

13. (Previously Presented) The communication system according to claim 11, wherein the device is located in a radio network controller.

Attorney Docket No. P11303-US1
Customer Number: 27045

14. (Previously Presented) The communication system according to claim 11, wherein the device is located in a core network.

15. (Previously Presented) Method for managing a communication system, with at least two different access networks, wherein a first access network is capable of handling a first number of simultaneous communications between a mobile user equipment and the first access network, and wherein a second access network is capable of handling a second number of simultaneous communications between the mobile user equipment and the second access network, said method comprising the steps of:

evaluating if a handover from the first access network to the second access network should be effected; and

selecting, in the case that the handover is necessary, which communication or communications are handed over.

16. (Previously Presented) The method according to claim 15, wherein an access network sends a handover query to the mobile user equipment.

17. (Previously Presented) The method according to claim 16, wherein the access network signals a core network, before the access network sends the handover query to the mobile user equipment.

18. (Previously Presented) The method according to claim 17, wherein the core network adds information about a communication or communications which can be supported.

19. (Previously Presented) The method according to claim 15, further comprising the step of enabling a mobile user to decide whether the communication or the communications should be handed over to the second access network.

Attorney Docket No. P11303-US1
Customer Number: 27045

20. (Previously Presented) The method according to claim 15, wherein the mobile user equipment informs the access network about the communication or the communications which should be handed over to the second access network.

21. (Previously Presented) The method according to claim 15, wherein the mobile user equipment receives a handover query for handover towards the second access network, then the mobile user equipment disconnects all connections that cannot be kept in the second access network.

22. (Previously Presented) The method according to claim 15, wherein the core network decides which communication or communications should be handed over to the second access network.

23. (Previously Presented) The method according to claim 15, wherein all communications which cannot be kept in the second access network are disconnected.

24. (Previously Presented) The method according to claim 15, wherein at least one decision about a communications which are handed over in the case that the mobile user equipment would move between the first access network and the second access network depends on at least one presetting.

25. (Previously Presented) The method according to claim 24, wherein the presettings are located within a mobile user equipment.

26. (Previously Presented) The method according to claim 25, wherein the presettings are transferred to the core network within at least one of an initial user equipment message and in a setup message.

27. (Previously Presented) The method according to claim 25, wherein a message which depends on the presettings is sent to the core network after the core network has sent a request to the mobile user equipment.

Attorney Docket No. P11303-US1
Customer Number: 27045

28. (Previously Presented) The method according to claim 24, wherein the presettings are stored within at least one of an access network and a core network.

29. (Previously Presented) The method according to claim 28, wherein the presettings can be different for each mobile user.

30. (Previously Presented) The method according to claim 28, wherein the presettings are identical for all users.

31. (Previously Presented) The method according to claim 24, wherein the presettings can be different for different categories of communications.

32. (Previously Presented) The method according to claim 24, wherein the presettings can be different for different priorities for different communications.

33. (Previously Presented) The method according to claim 24, wherein the presettings are defined and modified by an operator.

34. (Previously Presented) The method according to claim 24, wherein the presettings are defined and modified by a mobile user.

35. (Previously Presented) The method according to claim 15, wherein at least one of the communications is put on hold before the handover and kept on hold after the handover.

36. (Previously Presented) The method according to claim 15, wherein the mobile user equipment puts the at least one communication on hold.

37. (Previously Presented) The method according to claim 15, wherein the core network puts the at least one communication on hold.

Attorney Docket No. P11303-US1
Customer Number: 27045

38. (Previously Presented) The method according to claim 15, wherein the mobile user equipment contains an indicator that an intersystem handover is needed.

39. (Canceled)

40. (Previously Presented) A system for managing a communication system, with at least two different access networks, wherein a first access network is capable of handling a first number of simultaneous communications between a mobile user equipment and the first access network, and wherein a second access network is capable of handling a simultaneous second number of communications between the mobile user equipment and the second access network, said system comprising:

means for evaluating if a handover from the first access network to the second access network should be effected; and

means for selecting, in the case that the handover is necessary, which communication or communications are handed over.

41. (Previously Presented) A communication system comprising:

a mobile user equipment,

a Universal Mobile Telecommunications System (UMTS) wherein the UMTS network is capable of handling a first plurality of simultaneous calls between a mobile user equipment ,

a Global System for a Mobile Communication System (GSM) networks, wherein the GSM network is capable of handling a second plurality of simultaneous calls between the mobile user equipment and the GSM network, and

wherein at least one of the mobile user equipment and the communication system contain

at least one means for evaluating if a handover between the UMTS material and GSM material should be effectuated and

Attorney Docket No. P11303-US1
Customer Number: 27045

at least one means for selecting, in the case that the handover is necessary, which call or call from the first plurality of call are to be handed over.

Attorney Docket No. P11303-US1
Customer Number: 27045

IX. Evidence Appendix.
NONE

Attorney Docket No. P11303-US1
Customer Number: 27045

X. Related Proceedings Appendix.
NONE